

REMARKS/ARGUMENTS

This Amendment and Response is responsive to the final Office action dated February 11, 2009, setting forth a shortened three month statutory period for reply expiring on May 11, 2009. This Amendment and Response is submitted on May 11, 2009, along with a Request for Continued Examination and an Information Disclosure Statement.

The Assignee thanks the Examiner for reviewing this application and issuing an Office action. The Assignee further thanks the Examiner for the courtesy extended to the Assignee's representative during a telephone interview on May 7, 2009. The substance of the telephone interview is incorporated into the following remarks. Thus, the remarks constitute the Assignee's separate record of the interview.

Prior to entry of this Amendment and Response, claims 4-6, 19-22, and 35 are pending in the application, with claims 4, 6, 19, and 21 being independent claims. By this Amendment the Assignee amends claim 4. Accordingly, after entry of this Amendment and Response, claims 4-6, 19-22, and 35 will remain pending.

I. Rejection of Claims Under 37 U.S.C. § 112

The Office action rejects claims 4, 5, and 35 under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, the Office action indicates that these claims are considered to be incomplete for omitting essential elements, namely a means or device to perform a downward or upward movement and a means to weigh a user. The Assignee respectfully traverses this rejection.

As discussed during the telephone interview, the Assignee respectfully submits that a user's weight is not measured by the exercise apparatus recited in independent claim 4. Rather, the treadle is configured to move downward/upward in response to changes (increase/decrease) in "a user applied weight." In other words, the user applies his weight to the treadle, increasing with a step onto the treadle and decreasing with a step off of the treadle, in response to which the treadle moves. As no measurement of the user's weight is recited, the Assignee respectfully submits that "a means to weigh the user" is not an essential element and that claim 4 is complete without such.

Claim 4 is amended to recite "a force applied by a user" to avoid any confusion regarding measurement of a user's weight. As discussed during the interview, such amendment clarifies that the treadle moves in response to a force applied by a user, namely

performing a downward movement in response to an increase in the force and performing an upward movement in response to a decrease in the force. It should be understood that the force is also not measured by the exercise apparatus recited in claim 4, but rather the treadle thereof moves in response to forces applied by the user. Therefore, the Assignee respectfully submits that claim 4 is complete without a means for measuring an applied force.

Although the Assignee believes that the recitation of a "treadle configured to perform a downward movement . . . and to perform an upward movement" is sufficient structure, the Assignee amends claim 4 to recite a frame and to recite that the treadle is pivotally attached with the frame. The Assignee respectfully submits that pivotal attachment with a frame is sufficient structure to define how the treadle performs the downward and upward movements. As the mechanical movement of the treadle in treadle-type exercise apparatus is known in the art to be accomplished in a variety of mechanical configurations, the Assignee respectfully submits that recitation of further structure should not be required.

In view of the foregoing, the Assignee respectfully submits that claim 4, and claims 5 and 35 that depend therefrom, fully comply with U.S.C. § 112, second paragraph. Accordingly, the Assignee respectfully requests withdrawal of the rejection.

As noted during the telephone interview, the Assignee has amended claim 4 for consistency with dependent claim 35. Specifically, "each movement" in claim 4 is replaced by "at least one of the downward movement and the upward movement" to clarify that the at least one second signal is generated with the downward movement and/or the upward movement of a treadle.

II. Allowable Claims

The Assignee thanks the Examiner for the indication of allowable subject matter in claims 6 and 19-22.

III. Conclusion

After entry of the above listing of claims and remarks, claims 4-6, 19-22, and 35 remain in the application. In accordance with the amendments and arguments set forth herein, the Assignee respectfully submits the application and all claims are in a condition for allowance, and requests such prompt allowance.

Appl. No. 10/789,579
Reply to Final Office Action of February 11, 2009

The Assignee believes no fees or petitions are due with this filing. However, should any such fees or petitions be required, please consider this as authorization therefor and please charge such fees to Deposit Account number 04-1415.

Should any issues remain that the Examiner believes may be dealt with in a telephone conference, the Examiner is invited to contact the undersigned at 303-629-3400.

Respectfully submitted,

Date: May 11, 2009

By 
Klifton L. Kime, Attorney Reg. No. 42,733
DORSEY & WHITNEY LLP
370 Seventeenth Street, Suite 4700
Denver, Colorado 80202-5647
Tel.: (303) 629-3400
Fax: (303) 629-3450

USPTO Customer No.: 80705